

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 324 to 329 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEW INDIA ASSURANCE CO.LTD.

Versus

SAJAN KESHURBHAI

Appearance:

MR MR GEHANI for Petitioner

MR RC KAKKAD for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/04/96

ORAL JUDGEMENT

1. New India Assurance Co.Ltd is a common petitioner in this group of CRAs. Respondents are the original claimants who have instituted Motor Accident Claim Petitions. The details of CRA, MACP and the amount of interim compensation and the date of order of the tribunal, i.e. MACT at Jamnagar u/sec 140 under the principle of "no fault liability" are stated in the tabular form herein:

CRA MACP Amount of Date of order
No. No. interim
compensation

324/96 317/94 Rs.12,000/- 19.1.1996
with interest
at 12%

325/96 316/94	do	do	
326/96 319/94	do	do	
327/96 318/94		do	do
328/96 315/94		do	do
329/96 320/94	do	do	

2. While issuing Rule nisi in this group of CRAs this court directed the Insurance Co. to deposit the full amount in the tribunal with further direction that 1/2 amount so deposited shall be paid to the claimant in each petition and for the balance amount no disbursement to be made till further order is passed by this court.

3. Mr.Ghehani has informed the court that the Insurance Co. has deposited full amount of Rs.12,000/- in each petition as directed by the tribunal.

4. Mr.Ghehani, Ld.advocate for petitioner-company has submitted before this court that the Insurance Co.can not be called upon to pay interim amount of compensation under the principle of "no fault liability" when the defence is taken by the Insurance Co. that the policy in question was an "Act Policy" and it did not cover risk of the occupants in goods rickshaw. He submitted that since the claimants were travelling in Chhakdo which was a goods vehicle, occupants of said vehicle were not covered by the policy of the Insurance Company. In his submission when such legal defence is available to the Insurance Co. it could not be directed to pay the interim compensation.

5. Mr.R.C.Kakkad, Ld.advocate for respondent-claimants on the other hand relied upon the decision of the Ld.single judge of this court in the case of NEW INDIA ASSURANCE CO.LTD.vs MITHAKHAN DINAKHAN NOTITYAR reported in 1995(2) GLR 111. In the aforesaid decision while dealing with section 140 of Motor Vehicles Act, 1988 the learned single judge of this court held that it is a piece of beneficial and ameliorative legislation providing for immediate aid to the victims of the accidents. In such cases the claimant is not

required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to wrongful act, neglect or default of the owner of the vehicle concerned or any other person. The learned single judge further took the view that in construing social welfare legislation the courts should adopt beneficial rule of construction and in any event that construction should be preferred which fulfils the policy of the legislation. The learned single judge also took the view that the tribunal should make the award under section 140 as soon as it comes to conclusion that the owner of the vehicle was involved and that the vehicle was insured. In the case before the learned single judge it was the case of the petitioner-company that the claimant was travelling in a goods vehicle without any goods and therefore the Insurance Co. could not have been saddled with any liability under section 140 of the Act. The contention is identical contention to one which is raised before this court by Mr. Ghehani. Such contention was not accepted by the learned single judge. However, Mr. Ghehani is right in submitting that the Insurance Co. will be without any remedy and will very often suffer irreparable loss if ultimately it is found that under the Act and the policy the Insurance Co was not liable to pay compensation to the occupants who were travelling in goods vehicle. He submitted that even if liability is to be fastened under section 140 of the said Act the claimant should be put to some condition so that in case of success of the Insurance Company it can take steps to recover said amount from the claimants.

6. In view of the decision of the learned single judge in the case of (supra) there is no substance in the contention raised by Mr. Ghehani on behalf of the petitioner-Company. The petitioner-Co is liable to pay interim compensation under section 140 of the said Act. 1/2 amount of the award deposited is directed to be disbursed to the claimants and balance 1/2 of the awarded amount is directed to be disbursed to the claimants against their furnishing solvent security to the satisfaction of the tribunal. This would safeguard partially the interest of the Insurance Company in case of its ultimate success in the claim petition.

7. In the result all the aforesaid CRAs fail and they are dismissed subject to aforesaid directions as regards balance amount. Rule in each CRA is discharged. No costs.

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